

AMENDED IN ASSEMBLY SEPTEMBER 5, 2003

AMENDED IN ASSEMBLY AUGUST 25, 2003

AMENDED IN ASSEMBLY AUGUST 18, 2003

AMENDED IN ASSEMBLY JULY 9, 2003

SENATE BILL

No. 18

Introduced by Senators Burton, Chesbro, and Ducheny

December 2, 2002

An act to amend Section 815.3 of the Civil Code, to amend Sections 65040.2, 65351, 65453, and 65560 of, and to add Sections 65351.1 and 65562.5 to, the Government Code, to amend Sections 7050.5 and 7054 of the Health and Safety Code, and to amend Sections 5097.9, 5097.91, 5097.92, 5097.94, 5097.96, 5097.97, 5097.98, 5097.99, and 5097.995 of, to add Sections 5097.10, 5097.96.1, 5097.96.2, 5097.96.3, 5097.96.4, 5097.96.5, 5097.993, 21084.3, ~~and 21097~~, *and 21097.5* to, and to amend the heading of Chapter 1.75 (commencing with Section 5097.9) of Division 5 of, the Public Resources Code, relating to Traditional Tribal Cultural Sites, ~~and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 18, as amended, Burton. Traditional Tribal Cultural Sites.

(1) Existing law establishes the Native American Heritage Commission and authorizes the commission to bring an action to prevent severe and irreparable damage to, or assure appropriate access for Native Americans to, a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property.

This bill would establish the Traditional Tribal Cultural Site (TTCS) Register and would require the commission to develop, maintain, and administer it, as specified. The bill would declare various powers and duties of the commission, including the duty to determine whether a proposed development project may ~~affect a TTCS and whether that project will result in~~ *cause* a substantial adverse change in a TTCS. *The bill would exempt specified projects, including those involving negligible expansion of use, replacement of an existing structure, and construction of small utility extensions, from the various requirements involved in that duty.* The bill would establish procedures for challenging and reviewing the commission's determinations, including procedures to protect the confidentiality of any information that would create a risk of harm to a TTCS. The bill would exempt the TTCS Register from disclosure as a public record. The bill would make it a misdemeanor to intentionally release information about a TTCS, knowing that it is required to be held confidential, thereby creating a new crime and imposing a state-mandated local program.

(2) The existing California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, as defined, or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also generally requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA provides some exemptions from its requirements for specified projects.

This bill would create additional exemptions from CEQA, but would prohibit an exemption from CEQA for a project that the commission determines may cause a substantial adverse change in a TTCS. The bill would specify certain unique procedures that a lead agency must follow when a project may adversely affect a TTCS. By imposing these additional duties on lead agencies, the bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund



to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

~~(4) This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: $\frac{2}{3}$ majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:

3 (1) Native Americans have used, and continue to use, natural
4 settings, referred to as “Traditional Tribal Cultural Sites”, in the
5 conduct of ceremonies and spiritual practices that provide the
6 moral and ethical foundation of native societies and are essential
7 elements in tribal cultural traditions.

8 (2) Native American places of spiritual and ceremonial
9 importance reflect the tribes’ continuing cultural ties to the land
10 and to their ancestral heritage.

11 (3) These sites are used for prayer, vision quests,
12 medicine-making, and traditional ceremonies. They are
13 considered holy and sacrosanct by California’s Native American
14 people. Many are significant to the tribes’ cultural society and to
15 their continued existence as a people.

16 (4) To further and perpetuate the cultural tradition and spiritual
17 practices of California tribes, these Traditional Tribal Cultural
18 Sites require preservation.

19 (5) California had the largest aboriginal population in North
20 America before contact with non-Native Americans. Yet,
21 California Native American tribes suffered the greatest losses
22 from termination, removal and assimilation policies, including the
23 loss of a majority of their lands and Traditional Tribal Cultural



1 Sites. This devastation debilitated tribal cultural identity and
2 threatened the survival of California Native American people.

3 (6) In addition to the lingering effects of these historic policies,
4 the continued loss of Traditional Tribal Cultural Sites for more
5 than the past three centuries has caused further debilitating impacts
6 on the cultural traditions and tribal identity of California Native
7 Americans.

8 (b) In recognition of Native American tribal sovereignty and
9 the unique relationship between California state government and
10 California tribal governments, it is the intent of the Legislature, in
11 enacting this act, to accomplish all of the following:

12 (1) Recognize that Traditional Tribal Cultural Sites are
13 essential elements in tribal cultural tradition and identity.

14 (2) Provide protection for Traditional Tribal Cultural Sites
15 through listing on a confidential registry overseen by the Native
16 American Heritage Commission, and establish a legal framework
17 by which sites listed on, or eligible for listing on, the Traditional
18 Tribal Cultural Sites Registry may be defended and preserved.

19 (3) Protect the access to and ability of Native Americans to
20 engage in cultural and traditional practices in a meaningful way at
21 Traditional Tribal Cultural Sites through the facilitation of access
22 agreements and other methods of providing legal assurances to
23 both landowners and Native American tribes.

24 (4) Require meaningful consultation among the Native
25 American Heritage Commission, property owners, public
26 agencies, project proponents, and Native American tribes at the
27 earliest possible point in the planning, acquisition, and the
28 environmental review of a proposed development project that
29 might adversely impact a Traditional Tribal Cultural Site.

30 (5) Provide for the development of treatment agreements,
31 programmatic agreements, and mutually acceptable mitigation
32 agreements, and promote the avoidance of development of
33 Traditional Tribal Cultural Sites.

34 (6) Provide a measure of protection to Traditional Tribal
35 Cultural Sites on public lands and state-managed federal lands.

36 SEC. 2. Section 815.3 of the Civil Code is amended to read:

37 815.3. Only the following entities or organizations may
38 acquire and hold conservation easements:

39 (a) A tax-exempt nonprofit organization qualified under
40 Section 501(c)(3) of the Internal Revenue Code and qualified to



1 do business in this state, that has as its primary purpose the
2 preservation, protection, or enhancement of land in its natural,
3 scenic, historical, agricultural, forested, or open-space condition
4 or use.

5 (b) The state or a city, county, city and county, district, or other
6 state or local governmental entity, if otherwise authorized to
7 acquire and hold title to real property and if the conservation
8 easement is voluntarily conveyed. No local governmental entity
9 may condition the issuance of an entitlement for use on the
10 applicant's granting of a conservation easement pursuant to this
11 chapter.

12 (c) A federally recognized California Indian tribe or a
13 nonfederally recognized California Indian tribe, band, or nation
14 listed on the Native American Contact List maintained by the
15 Native American Heritage Commission pursuant to subdivision
16 (d) of Section 5097.94 of the Public Resources Code.

17 SEC. 3. Section 65040.2 of the Government Code is amended
18 to read:

19 65040.2. (a) In connection with its responsibilities under
20 subdivision (l) of Section 65040, the office shall develop and adopt
21 guidelines for the preparation and content of the mandatory
22 elements required in city and county general plans by Article 5
23 (commencing with Section 65300) of Chapter 3 of Division 1 of
24 Title 7. For purposes of this section, the guidelines prepared
25 pursuant to Section 50459 of the Health and Safety Code shall be
26 the guidelines for the housing element required by Section 65302.
27 In the event that additional elements are hereafter required in city
28 and county general plans by Article 5 (commencing with Section
29 65300) of Chapter 3, the office shall adopt guidelines for those
30 elements within six months of the effective date of the legislation
31 requiring those additional elements.

32 (b) The office may request from each state department and
33 agency, as it deems appropriate, and the department or agency
34 shall provide, technical assistance in readopting, amending, or
35 repealing the guidelines.

36 (c) The guidelines shall be advisory to each city and county in
37 order to provide assistance in preparing and maintaining their
38 respective general plans.



1 (d) The guidelines shall contain the guidelines for addressing
2 environmental justice matters developed pursuant to Section
3 65040.12.

4 (e) The guidelines shall contain advice including
5 recommendations for best practices to allow for collaborative land
6 use planning of adjacent civilian and military lands and facilities.
7 The guidelines shall encourage enhanced land use compatibility
8 between civilian lands and any adjacent or nearby military
9 facilities through the examination of potential impacts upon one
10 another.

11 (f) The guidelines shall contain advice for addressing the
12 effects of civilian development on military readiness activities
13 carried out on all of the following:

- 14 (1) Military installations.
- 15 (2) Military operating areas.
- 16 (3) Military training areas.
- 17 (4) Military training routes.
- 18 (5) Military airspace.
- 19 (6) Other territory adjacent to those installations and areas.

20 (g) The guidelines shall contain advice for consulting with
21 Native American tribes and the Native American Heritage
22 Commission for the preservation of sites listed in the Traditional
23 Tribal Cultural Site Register established under subdivision (a) of
24 Section 5097.96 of the Public Resources Code, including
25 procedures for protecting the confidentiality of information
26 concerning the specific identity, location, character or use of those
27 sites. “Native American tribe” and “Traditional Tribal Cultural
28 Site Register” shall have the meanings provided in Section
29 5097.10 of the Public Resources Code.

30 (h) The office shall provide for regular review and revision of
31 the guidelines established pursuant to this section.

32 SEC. 4. Section 65351 of the Government Code is amended
33 to read:

34 65351. During the preparation or amendment of the general
35 plan, the planning agency shall provide opportunities for the
36 involvement of citizens, public agencies, public utility companies,
37 Native American tribes identified on the Native American Contact
38 List maintained by the Native American Heritage Commission
39 pursuant to subdivision (d) of Section 5097.94 of the Public
40 Resources Code, and civic, education, and other community



1 groups, through public hearings and any other means the city or
2 county deems appropriate.

3 SEC. 5. Section 65351.1 is added to the Government Code, to
4 read:

5 65351.1. Prior to adoption, revision, amendment, or update of
6 a city or county’s general plan, the city or county shall consult with
7 the Native American Heritage Commission and any appropriate
8 Native American tribes identified on the Native American Contact
9 List maintained by the commission for the purpose of preserving
10 the sites listed in the Traditional Tribal Cultural Site Register
11 (“TTCS Register”) that are located within the city or county’s
12 jurisdiction. An “appropriate Native American tribe” and “TTCS
13 Register” shall have the meanings provided in Section 5097.10 of
14 the Public Resources Code. Consistent with the guidelines
15 developed by the Office of Planning and Research pursuant to
16 Section 65040.2, cities and counties shall protect the
17 confidentiality of information concerning the specific identity,
18 location, character, or use of the listed sites.

19 SEC. 6. Section 65453 of the Government Code is amended
20 to read:

21 65453. (a) A specific plan shall be prepared, adopted, and
22 amended in the same manner as a general plan, except that a
23 specific plan may be adopted by resolution or by ordinance and
24 may be amended as often as deemed necessary by the legislative
25 body. Adoption or amendment of a specific plan shall be subject
26 to the consultation requirements of Section 65351.1.

27 (b) A specific plan may be repealed in the same manner as it is
28 required to be amended.

29 SEC. 7. Section 65560 of the Government Code is amended
30 to read:

31 65560. (a) “Local open-space plan” is the open-space
32 element of a county or city general plan adopted by the board or
33 council, either as the local open-space plan or as the interim local
34 open-space plan adopted pursuant to Section 65563.

35 (b) “Open-space land” is a parcel or area of land or water that
36 is essentially unimproved and devoted to an open-space use as
37 defined in this section, and that is designated on a local, regional
38 or state open-space plan as any of the following:

39 (1) Open space for the preservation of natural resources,
40 including, but not limited to, sites listed in the Native American



1 Traditional Tribal Cultural Site Register established under Section
2 5097.96 of the Public Resources Code, areas required for the
3 preservation of plant and animal life, including habitat for fish and
4 wildlife species; areas required for ecological and other scientific
5 study purposes; rivers, streams, bays and estuaries; areas adjacent
6 to military installations, military training routes, and restricted
7 airspace that can provide additional buffer zones to military
8 activities and complement the resource values of the military
9 lands; and coastal beaches, lakeshores, banks of rivers and
10 streams, and watershed lands.

11 (2) Open space used for the managed production of resources,
12 including, but not limited to, forest lands, rangeland, agricultural
13 lands and areas of economic importance for the production of food
14 or fiber; areas required for recharge of groundwater basins; bays,
15 estuaries, marshes, rivers and streams which are important for the
16 management of commercial fisheries; and areas containing major
17 mineral deposits, including those in short supply.

18 (3) Open space for outdoor recreation, including, but not
19 limited to, areas of outstanding scenic, historic and cultural value;
20 areas particularly suited for park and recreation purposes,
21 including access to lakeshores, beaches, and rivers and streams;
22 and areas that serve as links between major recreation and
23 open-space reservations, including utility easements, banks of
24 rivers and streams, trails, and scenic highway corridors.

25 (4) Open space for public health and safety, including, but not
26 limited to, areas that require special management or regulation
27 because of hazardous or special conditions such as earthquake
28 fault zones, unstable soil areas, flood plains, watersheds, areas
29 presenting high fire risks, areas required for the protection of water
30 quality and water reservoirs, and areas required for the protection
31 and enhancement of air quality.

32 SEC. 8. Section 65562.5 is added to the Government Code, to
33 read:

34 65562.5. If land designated, or proposed to be designated, as
35 open space contains a site listed in the Traditional Tribal Cultural
36 Site Register established under Section 5097.96 of the Public
37 Resources Code, the city or county in which the site is located shall
38 consult with the Native American Heritage Commission and the
39 appropriate Native American tribe, as defined by Section 5097.10
40 of the Public Resources Code, for the purposes of determining the



1 level of confidentiality required to protect the specific identity,
2 location, character, or use of the listed site, and developing proper
3 treatment of the site in any corresponding management plan, if one
4 will be developed for the listed area.

5 SEC. 9. Section 7050.5 of the Health and Safety Code is
6 amended to read:

7 7050.5. (a) Every person who knowingly mutilates or
8 disinters, wantonly disturbs, or willfully removes any human
9 remains in or from any location other than a dedicated cemetery
10 without authority of law is guilty of a misdemeanor, except as
11 provided in Section 5097.99 of the Public Resources Code. This
12 subdivision does not apply to any person carrying out an
13 agreement developed pursuant to subdivision (o) of Section
14 5097.94 of the Public Resources Code or to any person authorized
15 to implement Section 5097.98 of the Public Resources Code.

16 (b) In the event of discovery or recognition of any human
17 remains in any location other than a dedicated cemetery, there shall
18 be no further excavation or disturbance of the site or any nearby
19 area reasonably suspected to overlie adjacent remains until the
20 coroner of the county in which the human remains are discovered
21 has determined, in accordance with Chapter 10 (commencing with
22 Section 27460) of Part 3 of Division 2 of Title 3 of the Government
23 Code, that the remains are not subject to the provisions of Section
24 27491 of the Government Code or any other related provisions of
25 law concerning investigation of the circumstances, manner and
26 cause of any death, and the recommendations concerning the
27 treatment and disposition of the human remains have been made
28 to the person responsible for the excavation, or to his or her
29 authorized representative, in the manner provided in Section
30 5097.98 of the Public Resources Code. The coroner shall make his
31 or her determination within two working days from the time the
32 person responsible for the excavation, or his or her authorized
33 representative, notifies the coroner of the discovery or recognition
34 of the human remains.

35 (c) If the coroner determines that the remains are not subject to
36 his or her authority and if the coroner recognizes the human
37 remains to be those of a Native American, or has reason to believe
38 that they are those of a Native American, he or she shall contact,
39 by telephone within 24 hours, the Native American Heritage
40 Commission.



1 SEC. 10. Section 7054 of the Health and Safety Code is
2 amended to read:

3 7054. (a) (1) Except as authorized pursuant to the sections
4 referred to in subdivision (b), every person who deposits or
5 disposes of any human remains in any place, except in a cemetery,
6 is guilty of a misdemeanor.

7 (2) Every licensee or registrant pursuant to Chapter 12
8 (commencing with Section 7600) or Chapter 19 (commencing
9 with Section 9600) of Division 3 of the Business and Professions
10 Code and the agents and employees of the licensee or registrant,
11 or any unlicensed person acting in a capacity in which a license
12 from the Cemetery and Funeral Bureau is required, who, except as
13 authorized pursuant to the sections referred to in subdivision (b),
14 deposits or disposes of any human remains in any place, except in
15 a cemetery, is guilty of a misdemeanor that shall be punishable by
16 imprisonment in a county jail not exceeding one year, by a fine not
17 exceeding ten thousand dollars (\$10,000), or both that
18 imprisonment and fine.

19 (b) Cremated remains may be disposed of pursuant to Sections
20 7054.6, 7116, 7117, and 103060.

21 (c) Subdivision (a) of this section does not apply to the reburial
22 of Native American remains under an agreement developed
23 pursuant to subdivision (o) of Section 5097.94 of the Public
24 Resources Code, or implementation of a recommendation or
25 agreement made pursuant to Section 5097.98 of the Public
26 Resources Code.

27 SEC. 11. The heading of Chapter 1.75 (commencing with
28 Section 5097.9) of Division 5 is amended to read:

29

30 CHAPTER 1.75. NATIVE AMERICAN HERITAGE AND TRADITIONAL
31 TRIBAL CULTURAL SITES

32

33 SEC. 12. Section 5097.9 of the Public Resources Code is
34 amended to read:

35 5097.9. A public agency and a private party using or
36 occupying public property, or operating on public property, under
37 a public license, permit, grant, lease, or contract made on or after
38 July 1, 1977, may not in any manner whatsoever interfere with the
39 free expression or exercise of Native American religion as
40 provided in the United States Constitution and the California



1 Constitution; nor shall any such agency or party cause significant
2 and irreparable damage to a Native American sanctified cemetery,
3 place of worship, religious or ceremonial site, or sacred shrine
4 located on public property, except on a clear and convincing
5 showing that the public interest and necessity so require. The
6 provisions of this chapter shall be enforced by the commission,
7 pursuant to Sections 5097.94 and 5097.97.

8 This chapter may not be construed to limit the requirements of
9 the California Environmental Quality Act (Division 13
10 (commencing with Section 21000)).

11 Nothing in this section may be construed to nullify protections
12 for Native American cemeteries under other statutes.

13 SEC. 13. Section 5097.10 is added to the Public Resources
14 Code, to read:

15 5097.10. As used in this chapter, the following terms have the
16 following meanings:

17 (a) “Appropriate Native American tribe” means a Native
18 American tribe determined by the commission to have attached
19 traditional tribal cultural significance to the TTCS at issue.

20 (b) “Commission” means the Native American Heritage
21 Commission.

22 (c) “Consultation” means the meaningful and timely process
23 of seeking, discussing, and considering carefully the views of
24 others, in a manner that is cognizant of all parties’ cultural values,
25 and where feasible, seeking agreement. Consultation between
26 government agencies and Native American tribes shall be
27 conducted in a way that is mutually respectful of each party’s
28 sovereignty. Consultation shall also recognize the tribe’s potential
29 need for confidentiality with respect to sites that have traditional
30 tribal cultural significance.

31 (d) “Consulting parties” means the appropriate Native
32 American tribes, owners of property within the site’s boundaries,
33 the project proponent, the lead agency, and public agencies with
34 jurisdiction over the area in which the effects of a project may
35 occur or having principal responsibility for carrying out or
36 approving a project. Other individuals or organizations with a
37 demonstrated interest in the project, due to the nature of their legal,
38 cultural, or economic relation to the project or affected property,
39 may participate at the commission’s discretion. The commission



1 shall exercise that discretion in accordance with criteria adopted
2 by the commission.

3 (e) “Final determination” means a final decision issued by the
4 commission regarding the listing of a site in the TTCS Register,
5 whether a TTCS may be affected by a proposed project, or whether
6 a proposed project may result in a substantial adverse change to a
7 TTCS.

8 (f) “Eligible for listing in the TTCS Register” means a site that
9 is not listed in the TTCS Register, but if the commission were to
10 consider the site for listing pursuant to Section 5097.96, it would
11 likely find that the site meets the criteria for listing. The
12 determination of eligibility may be delegated to the executive
13 secretary. The executive secretary shall comply with criteria
14 adopted pursuant to subdivision (b) of Section 5097.96 and with
15 procedures set forth in Section 5097.96.1.

16 (g) “Gathering site” means an area where traditional food,
17 plants, or other materials or cultural objects, including, but not
18 limited to, baskets, tools, ropes, nets, ceremonial items, clothing,
19 and personal adornments that are used in a traditional practice by
20 a Native American tribe, are gathered, collected, assembled, or
21 maintained.

22 (h) “Lead agency” has the same meaning as the definition in
23 Section 21067.

24 (i) “Native American Contact List” means the list developed
25 and maintained by the commission pursuant to subdivision (d) of
26 Section 5097.94 that identifies those Native American tribes to be
27 notified and consulted pursuant to this chapter and the
28 requirements of the California Environmental Quality Act
29 (Division 13 (commencing with Section 21000)).

30 (j) “Native American tribe” means a federally recognized
31 California Indian tribe listed on the Federal Register and any
32 nonfederally recognized California Indian tribe, band, or nation
33 listed on the Native American Contact List maintained by the
34 commission.

35 (k) “Project” has the same meaning as the definition in Section
36 21065.

37 (l) “Substantial adverse change in a TTCS” means a direct or
38 reasonably foreseeable indirect change to the physical
39 characteristics of a TTCS in a manner that would diminish the
40 traditional cultural significance of the TTCS.



1 (m) “Traditional Tribal Cultural Site” or “TTCS” means a site
2 listed in, or determined by the commission to be eligible for listing
3 in, the TTCS Register based on the criteria for listing established
4 by the commission through regulations adopted pursuant to
5 subdivision (b) of Section 5097.96. These criteria shall identify a
6 TTCS as a site that is traditionally associated with, or has served
7 as the site for engaging in activities related to, the traditional
8 beliefs, cultural practices, or ceremonies of a Native American
9 tribe. A TTCS shall be a reasonably delineated physical location
10 identifiable by physical characteristics. The TTCS Register is in
11 no way intended to infringe on Native American tribes’ sovereign
12 rights to define their own sites of religious and cultural
13 significance for their own purposes. The fact that a tribe has not
14 nominated a site for inclusion in the TTCS Register may not be
15 evidence that the site is not sacred or significant.

16 (n) “Traditional Tribal Cultural Site Register” or “TTCS
17 Register” means the Native American Traditional Tribal Cultural
18 Site Register established and maintained by the commission
19 pursuant to Section 5097.96.

20 SEC. 14. Section 5097.91 of the Public Resources Code is
21 amended to read:

22 5097.91. There is in state government a Native American
23 Heritage Commission, consisting of nine members appointed by
24 the Governor with the advice and consent of the Senate. The
25 executive secretary of the commission shall be appointed by the
26 Governor.

27 SEC. 15. Section 5097.92 of the Public Resources Code is
28 amended to read:

29 5097.92. (a) The nine-member commission shall be
30 composed of all the following members:

31 (1) Six members shall be elders, traditional people, or spiritual
32 leaders of California Native American tribes, nominated by Native
33 American organizations, tribes, or groups within the state. Two
34 members shall be from the northern region of the state, two
35 members from the central region, and two from the southern
36 region.

37 (2) Two members shall be recognized professionals in one or
38 more of the following disciplines: ethnohistory, archaeology,
39 anthropology, ethnography, or other related disciplines.



1 (3) One member shall represent the public or possess expertise
2 in fields of expertise the Governor deems necessary or desirable
3 to enable the commission to carry out its responsibilities.

4 (b) Each member of the commission shall have one vote.
5 Except as provided in subdivision (c), a majority of the total
6 appointed membership of the commission shall constitute a
7 quorum. Any action taken by the commission under this chapter
8 requires a majority vote of the members present at the meeting of
9 the commission, with a quorum being present, unless otherwise
10 specifically provided for in this chapter.

11 (c) (1) The commission may appoint regional committees of
12 three members of the commission to carry on investigations,
13 inquiries, or hearings pursuant to Sections 5097.96, 5097.96.1,
14 5097.96.2, and 5097.96.3. Each regional committee shall be
15 comprised of the two tribal commission members representing the
16 region where the subject TTCS or proposed TTCS is located. The
17 final determination of the three-member committee shall become
18 the final determination of the commission unless appealed to the
19 full commission.

20 (2) An appeal of a final determination by the regional
21 committee may be filed by any party to the procedure within 30
22 days of issuance of the regional committee's final determination.

23 (3) All actions of the regional committee are subject to Section
24 5097.96.5.

25 SEC. 16. Section 5097.94 of the Public Resources Code is
26 amended to read:

27 5097.94. The commission shall have the following powers
28 and duties:

29 (a) For purposes of the California Environmental Quality Act
30 (Division 13 (commencing with Section 21000)) only, the
31 commission shall constitute a trustee agency having jurisdiction
32 by law over Native American archaeological resources and
33 TTCSs. The trustee agency status of the commission does not
34 impair or alter any sovereign rights that a Native American tribe
35 may have with respect to any of those resources.

36 (b) To identify and catalog places of special religious or social
37 significance to Native Americans, and known graves and
38 cemeteries of Native Americans on private lands. The
39 identification and cataloguing of known graves and cemeteries
40 shall be completed on or before January 1, 1984. The commission



1 shall notify landowners on whose property those graves and
2 cemeteries are determined to exist, and shall identify the Native
3 American tribe most likely descended from those Native
4 Americans who may be interred on the property.

5 (c) To make recommendations relative to sites listed in the
6 TTCS Register that are located on private lands, and are
7 inaccessible to Native Americans, and have cultural significance
8 to Native American tribes for acquisition by the state or other
9 public agencies for the purpose of facilitating or assuring access
10 thereto by the appropriate Native American tribes.

11 (d) To develop and maintain the Native American Contact List.
12 That list shall identify those Native American tribes eligible to be
13 notified or consulted pursuant to this chapter and the California
14 Environmental Quality Act (Division 13 (commencing with
15 Section 21000)). The list shall include all Native American tribes,
16 as defined in subdivision (j) of Section 5097.10 , and a designated
17 representative contact person and address for each tribe. For
18 purposes of this chapter, the commission shall develop criteria to
19 identify and include Native American tribes that do not have
20 federal recognition. For the purpose of complying with
21 requirements relating to notice and consultation, the list shall be
22 organized by counties or portions of counties to identify the Native
23 American tribe or tribes that have attached traditional cultural
24 significance to each county or portion thereof.

25 (e) To make recommendations to the Legislature relative to
26 procedures and incentives that will voluntarily encourage private
27 property owners to preserve and protect sites listed in the TTCS
28 Register and to allow appropriate access to Native American tribes
29 for traditional tribal cultural activities.

30 (f) To employ and prescribe duties for staff members as
31 necessary to carry out the provisions of this chapter.

32 (g) To employ an attorney at law and assistant attorneys as
33 necessary. The attorney shall act as the attorney and legal adviser
34 of the commission, and shall have duties, including, but not limited
35 to, representing the commission before public agencies. If the
36 Attorney General is unable to represent the commission in a
37 judicial proceeding due to a conflict of interest or other reason, the
38 commission may be represented by the commission's attorney or
39 a private attorney pursuant to Section 11040 of the Government
40 Code.



- 1 (h) To accept grants or donations, real or in kind, to carry out
2 the purposes of this chapter.
- 3 (i) To make recommendations to the Director of Parks and
4 Recreation and the California Arts Council relative to the
5 California State Indian Museum and other Indian matters touched
6 upon by department programs.
- 7 (j) To bring an action to prevent significant and irreparable
8 damage to, or assure appropriate access for Native Americans to,
9 a Native American sanctified cemetery, place of worship, religious
10 or ceremonial site, sacred shrine, or sites listed in the TTCS
11 Register located on public property, pursuant to Section 5097.97.
12 If the court finds that significant and irreparable damage will occur
13 or that appropriate access will be denied, and appropriate
14 mitigation measures are not available, it shall issue an injunction,
15 unless it finds, on clear and convincing evidence, that the public
16 interest and necessity require otherwise. The Attorney General
17 shall represent the commission and the state in litigation
18 concerning affairs of the commission, unless the Attorney General
19 has determined to represent the agency against whom the
20 commission's action is directed, in which case the commission
21 shall be authorized to represent itself or employ other counsel as
22 needed. In any action to enforce the provisions of this subdivision
23 the commission shall introduce evidence showing that a cemetery,
24 place, site, or shrine has been historically regarded as a sacred or
25 sanctified place by Native American people and represents a place
26 of unique historical and cultural significance to a Native American
27 tribe.
- 28 (k) To request and utilize the advice and service of all federal,
29 state, local, and regional agencies.
- 30 (l) To assist Native American tribes in obtaining appropriate
31 access to and protection for sites listed in the TTCS Register that
32 are located on public or private lands for ceremonial or spiritual
33 activities.
- 34 (m) To assist state agencies in any negotiations with agencies
35 of the federal government for the protection of TTCSs that are
36 located on federal lands.
- 37 (n) To mediate, upon application of either of the parties,
38 disputes arising between landowners and known descendents
39 relating to the treatment and disposition of Native American



1 human burials, skeletal remains, and items associated with Native
2 American burials.

3 (o) To assist interested landowners in developing agreements
4 with appropriate Native American tribes for leaving in place,
5 treating or disposing of, with appropriate dignity, the human
6 remains and any items associated with Native American burials.
7 The agreements shall provide protection to Native American
8 human burials and skeletal remains from vandalism and
9 inadvertent destruction and provide, where remains are not left in
10 place, for sensitive treatment and disposition of Native American
11 burials, skeletal remains, and associated grave goods consistent
12 with the planned use of, or the approved project on, the land. The
13 commission shall adopt guidelines governing the process and
14 requirements for Native American monitoring.

15 (p) To adopt criteria and procedures for the TTCS Register and
16 oversee the administration of the TTCS Register.

17 (q) To oversee the administration of, and participate in the
18 consultation process pursuant to, this chapter and adopt, as
19 necessary, consultation process criteria and procedures.

20 (r) To assist Native American tribes in obtaining access to and
21 protection for gathering sites that are not included in the TTCS
22 Register, and to develop criteria to assist in the identification of
23 feasible or potentially feasible measures to avoid or mitigate
24 potential impacts to gathering sites.

25 (s) To develop and maintain a site records check service for the
26 purpose of providing limited information, consistent with the
27 confidentiality requirements of Section 5097.96.5, on the
28 presence or absence of a site on the TTCS Register or a site that
29 has been nominated for listing. The Native American Heritage
30 Commission shall identify the appropriate Native American tribes
31 on the Native American Contact List for the site.

32 (t) To adopt rules and regulations, as necessary, to carry out the
33 provisions of this chapter in conformity with the provisions of
34 Chapter 3.5 (commencing with Section 11340) of Part 1 of
35 Division 3 of Title 2 of the Government Code. The commission
36 may not begin listing TTCSs on the TTCS Register, or make a
37 determination about whether a site is eligible to be listed in the
38 TTCS Register, until the 30th day after the date of filing with the
39 Secretary of State the initial set of regulations to implement
40 subdivision (d) of Section 5097.94, subdivisions (b) and (c) of



1 Section 5097.96, or subdivision (a) of Section 5097.96.5,
2 whichever occurs last. The commission may not make a
3 determination pursuant to Section 5097.96.1 or 5097.96.2, or
4 identify project changes or mitigation measures pursuant to
5 Section 5097.96.3 until the 121st day after the date of filing with
6 the Secretary of State the initial set of regulations to implement
7 subdivision (d) of Section 5097.94, subdivisions (b) and (c) of
8 Section 5097.96, or subdivision (a) of Section 5097.96.5,
9 whichever occurs last. The commission shall adopt these initial
10 sets of regulations within one year of the effective date of the act
11 that amended this section during the 2003–04 Regular Session of
12 the Legislature. In drafting and promulgating rules and regulations
13 that may have substantial effects on the Native American tribes,
14 the commission shall consult with, and allow for, active
15 participation by the Native American tribes.

16 SEC. 17. Section 5097.96 of the Public Resources Code is
17 amended to read:

18 ~~5097.96.—~~

19 ~~(a)—~~

20 5097.96. (a) The Traditional Tribal Cultural Site Register or
21 TTCS Register is hereby established and shall be maintained and
22 administered by the commission. The TTCS Register is in no way
23 intended to infringe on Native American tribes' sovereign rights
24 to define their own sites of religious and cultural significance for
25 their own purposes. The fact that a tribe has not nominated a site
26 for inclusion in the TTCS Register may not be evidence that the
27 site is not sacred or significant.

28 (b) Consistent with the definition of TTCS in Section 5097.10,
29 the commission shall adopt regulations establishing criteria to list
30 sites in the TTCS Register. The commission shall acknowledge
31 that Native American tribes possess special expertise in
32 identifying TTCSs and shall consult with them and encourage
33 active participation in developing the criteria consistent with
34 subdivision (t) of Section 5097.94.

35 (c) The commission on its own initiative, or any appropriate
36 Native American tribe, may nominate a site for listing in the TTCS
37 Register. The commission shall adopt regulations establishing
38 procedures for the nomination and listing of sites in the TTCS
39 Register in a manner that shall protect the confidentiality concerns



1 of Native American tribes. The procedures shall provide the
2 following:

3 (1) All requests to the commission for nomination of sites in the
4 TTCS Register shall be supported by sufficient evidence to
5 facilitate meaningful review of the request.

6 (2) Prior to acting on the nomination of a site to be added to the
7 TTCS Register, the commission shall notify the Native American
8 tribe nominating the site, all owners of property within the site's
9 boundaries, and other appropriate Native American tribes, and
10 provide not less than 30 days for written comments on the
11 nomination. The commission shall accept and consider these
12 comments and any other comments it receives during the comment
13 period, and other appropriate information in determining whether
14 to list the site in the TTCS Register.

15 (3) Except where appropriate to maintain the confidentiality of
16 information concerning the specific identity, location, character,
17 or use of the proposed TTCS, the commission may seek and
18 consider the views of the public.

19 (4) The commission may hold a hearing to accept additional
20 comments regarding the requested nomination. Any hearing by
21 the commission to accept additional comments may be closed to
22 the public to maintain the confidentiality of information
23 concerning the specific identity, location, character, or use of the
24 site.

25 (5) The commission shall prepare proposed written findings to
26 support its proposed determination concerning the site nominated
27 for listing in the TTCS Register. The proposed findings shall
28 describe in general terms the traditional cultural significance of the
29 site, define its boundaries, and identify any appropriate Native
30 American tribes. The commission shall provide notice of its
31 proposed determination and findings to the parties identified in
32 paragraph (2), and shall provide those parties 30 days to submit
33 written comments to the commission regarding the proposed
34 determination and findings. The commission's proposed
35 determination and findings shall constitute a final determination
36 by the commission if no comments are submitted to the
37 commission during the 30-day comment period. If written
38 comments are submitted to the commission during that comment
39 period, the commission shall consider the comments, and may



1 modify the proposed determination and findings before making a
2 final determination.

3 (d) The commission, in accordance with procedures it adopts,
4 shall provide notice of a final determination to list a site in the
5 TTCS Register to the Native American tribe nominating the site,
6 all owners of property within the site's boundaries, and other
7 appropriate Native American tribes. The owner of property that
8 contains a site listed in the TTCS Register may at any time record
9 in the office of the county recorder of the county in which the site
10 is located, and the county recorder shall accept for recording, a
11 written notice of a registered TTCS in the form to be prescribed
12 by the commission. That notice may only refer generally and
13 without specificity to the identity, location, character, and use of
14 the registered TTCS on the property. Recording of a notice of a
15 registered TTCS shall satisfy any legal duty of the owner to
16 disclose material facts with respect to the registered TTCS.

17 (e) The commission shall maintain a list of the sites on the
18 TTCS Register. The list and all documents pertaining to the list
19 shall be exempt from disclosure as a public record pursuant to
20 subdivision (r) of Section 6254 of the Government Code.

21 (f) Notwithstanding subdivisions (c) and (d), the commission
22 shall develop an expedited procedure to list eligible sites identified
23 under subdivisions (g) and (h) on a priority basis in the TTCS
24 Register. The commission shall acknowledge that Native
25 American tribes possess special expertise in identifying TTCSs
26 and shall consult with them and encourage active participation in
27 developing the expedited procedure.

28 (g) Within two years of the date of filing with the Secretary of
29 State the initial set of regulations to implement subdivision (d) of
30 Section 5097.94, subdivisions (b) and (c) of Section 5097.96, or
31 subdivision (a) of Section 5097.96.5, whichever occurs last, the
32 commission shall complete the evaluation of the eligibility for
33 listing in the TTCS Register of any site previously identified,
34 catalogued, or listed by the commission as a site with traditional
35 cultural significance to Native Americans. If the commission
36 makes a proposed determination not to include on the TTCS
37 Register any site previously so identified, catalogued, or listed by
38 the commission, it shall consult with the appropriate Native
39 American tribe before making a final determination.



1 (h) The commission may recommend sites listed in the TTCS
2 for listing by the State Historic Preservation Officer for inclusion
3 in the California Register. The commission may also determine
4 that a site that is listed in the National Register of Historic Places
5 or the California Register of Historical Resources may be eligible
6 for listing in the TTCS Register. In making this determination, the
7 commission shall consult with the State Historic Preservation
8 Officer, and the State Historic Preservation Officer shall cooperate
9 and assist the commission.

10 (i) Any determination by the commission to list a site on the
11 TTCS Register shall be exempt from the California
12 Environmental Quality Act (Division 13 (commencing with
13 Section 21000)).

14 (j) The listing of a TTCS in the TTCS Register, or the
15 determination that a site is eligible for listing pursuant to Section
16 5097.96.1, does not in itself create an interest in real property.

17 SEC. 18. Section 5097.96.1 is added to the Public Resources
18 Code, to read:

19 5097.96.1. (a) Upon receipt of a timely written request for
20 consultation pursuant to paragraph (1) of subdivision (d) of
21 Section 21097 by an appropriate Native American tribe, the
22 commission shall promptly initiate consultation with the
23 consulting parties to ~~evaluate and determine whether a TTCS may~~
24 ~~be affected by~~ the proposed project *may cause a substantial*
25 *adverse change in a TTCS, and if so, whether there are project*
26 *changes or mitigation measures that will avoid or reduce the*
27 *substantial adverse change.* In making this determination, the
28 commission shall ascertain whether the site is listed or is eligible
29 for listing in the TTCS Register. Except where appropriate to
30 maintain the confidentiality of information concerning the
31 specific identity, location, character, or use of the TTCS, the
32 commission may consider the views of the public.

33 (b) If the site is not registered in the TTCS Register, an
34 appropriate Native American tribe may ask the commission for a
35 determination that the site is eligible for listing in the TTCS
36 Register. The determination of eligibility may be delegated to the
37 executive secretary. The executive secretary shall, if the power is
38 delegated by the commission, provide a signed statement setting
39 forth his or her opinion as to whether the site likely meets the
40 criteria for listing established pursuant to subdivision (b) of



1 Section 5097.96. In making this determination, the executive
2 secretary shall comply with criteria adopted by the commission.
3 The executive secretary shall seek the input of, and consult with,
4 appropriate consulting parties in making a determination pursuant
5 to this subdivision. An appeal of the executive secretary's
6 determination to the commission shall be made within 10 days of
7 the executive secretary's issuance of the determination, and the
8 appeal shall be heard and decided by the commission within 30
9 days of the appeal. An appeal may not be made to a regional
10 committee.

11 (c) If the commission determines that there is *no TTCS present,*
12 *or that a TTCS is present, but the proposed project will not alter*
13 *the physical characteristics of a the TTCS, that determination shall*
14 *constitute a final determination by the commission that the TTCS*
15 *will not be affected by the proposed project will not cause a*
16 *substantial adverse change in the TTCS, and the commission's*
17 *responsibilities under this section as to that TTCS are fully*
18 *discharged.*

19 ~~(d) If a TTCS is not excluded~~ *In the absence of a final*
20 *determination by the commission pursuant to subdivision (c), the*
21 *commission shall proceed, in accordance with Section 5097.96.2.*
22 ~~The obligation for the commission to proceed in accordance with~~
23 ~~Section 5097.96.2 does not constitute substantial evidence that the~~
24 ~~proposed project may result in a substantial adverse change in a~~
25 ~~TTCS.~~

26 ~~(e) Not,~~ *not later than 45 days after receiving the notice*
27 *required by subdivision (d) of Section 21097, the commission*
28 *shall notify in writing, the lead agency, the project proponent, and*
29 *any appropriate Native American tribes that consulted with the*
30 *commission pursuant to this section, of its final determination*
31 *pursuant to this section. as to whether the proposed project may*
32 *result in a substantial adverse change in a TTCS and, if so, whether*
33 *there are project changes or mitigation measures that, if*
34 *implemented, will avoid or reduce any substantial adverse change*
35 *to below a level of significance.*

36 (e) If the commission determines that the notice provided by the
37 lead agency does not include all of the information required by
38 subdivision (d) of Section 21097, the commission shall, within
39 five days of receipt of the notice, notify the lead agency that the
40 45-day review period has not begun and identify the necessary data



1 and information that is missing. The 45-day review period shall
2 begin when the commission notifies the lead agency that the
3 missing data and information have been received. The 45-day
4 period may be extended 15 days upon request by the commission
5 to the lead agency. Approval of longer or additional extension
6 requests is in the discretion of the lead agency. If the commission
7 has not issued its written determination or requested an extension
8 *within the time prescribed by this subdivision*, the commission's
9 inaction shall be deemed a final determination by the commission
10 that ~~no TTCS is affected by the proposed project will not result in~~
11 *a substantial adverse change in a TTCS.*

12 (f) *The commission shall proceed in accordance with Section*
13 *5097.96.2 in the absence of a final determination pursuant to*
14 *subdivision (c) or a final determination that any substantial*
15 *adverse change in a TTCS will be avoided or reduced to below a*
16 *level of significance as a result of project changes or mitigation*
17 *measures agreed to by the commission, appropriate Native*
18 *American tribes that participated in the consultation process, the*
19 *lead agency, and the project proponent.*

20 (g) *The baseline conditions by which the commission makes the*
21 *determination pursuant to this section shall be the physical*
22 *environmental conditions as they exist, from both a local and*
23 *regional environmental perspective, at the time of making the*
24 *request for consultation with the commission or the filing of the*
25 *application for a proposed project with the lead agency, whichever*
26 *occurs earlier.*

27 (h) *This section does not apply to the following projects:*

28 (1) *The operation, repair, maintenance, permitting, leasing,*
29 *licensing, or minor alteration of an existing public or private*
30 *structure, facility, mechanical equipment, or topographical*
31 *feature, involving negligible or no expansion of use beyond that*
32 *existing at the time of the lead agency's determination, and*
33 *consisting of one of the following:*

34 (A) *An existing facility of both investor and publicly owned*
35 *utilities used to provide electric power, telecommunications,*
36 *natural gas, sewerage, or other public utility services.*

37 (B) *Maintenance of a fish screen, fish ladder, wildlife habitat*
38 *area, artificial wildlife waterway device, streamflow, spring or*
39 *waterhole, and stream channel (clearing of debris) to protect fish*
40 *and wildlife resources.*



1 (2) *The replacement or reconstruction of an existing structure*
2 *or facility where the new structure will be located on the same site*
3 *as the structure replaced, will have substantially the same purpose*
4 *and capacity as the structure replaced, and will consist of one of*
5 *the following:*

6 (A) *The replacement or reconstruction of an existing utilities*
7 *system or facility involving negligible or no expansion of capacity.*

8 (B) *The conversion of an overhead distribution system facility*
9 *to underground, including the connection to existing overhead*
10 *distribution lines where the surface is restored to the condition*
11 *existing prior to the undergrounding.*

12 (3) *The construction and location of water main, sewage,*
13 *electrical, telecommunications, gas, and other utility extensions,*
14 *including street improvements of reasonable length to serve the*
15 *construction, so long as the construction consists of limited*
16 *numbers of new, small facilities or structures, installation of small*
17 *new equipment and facilities in small structures, and the*
18 *conversion of existing small structures from one use to another*
19 *where only minor modifications are made in the exterior of the*
20 *structure.*

21 SEC. 19. Section 5097.96.2 is added to the Public Resources
22 Code, to read:

23 5097.96.2. (a) ~~Not~~ *If, pursuant to Section 5097.96.1, the*
24 *commission proceeds to act pursuant to this section, then not later*
25 *than 75 days after notifying the lead agency of its final*
26 ~~*determination that a TTCS may be affected by the proposed*~~
27 ~~*project thereafter,*~~ *the commission shall notify in writing, the lead*
28 *agency, the project proponent, and any appropriate Native*
29 *American tribes that consulted with the commission, of its final*
30 *determination as to whether a proposed project will result in a*
31 *substantial adverse change to a TTCS. The 75-day period may be*
32 *extended 15 days upon request by the commission to the lead*
33 *agency. Approval of longer or additional extension requests is in*
34 *the discretion of the lead agency. If the commission has not issued*
35 *its written determination or requested an extension within the time*
36 *prescribed by this subdivision, the commission's inaction shall be*
37 *deemed a final determination by the commission that the proposed*
38 *project will not result in a substantial adverse change in a TTCS.*

39 (b) *Prior to making a final determination pursuant to*
40 *subdivision (a), the commission shall seek the input of and consult*



1 with appropriate consulting parties. The commission shall initiate
2 that consultation by providing notice *to appropriate consulting*
3 *parties* within five days after ~~making a final determination that a~~
4 ~~TTCS may be affected by the proposed project to appropriate~~
5 ~~consulting parties determining to proceed pursuant to this section.~~
6 The consulting parties shall have 30 days from receipt of the notice
7 to provide written comments to the commission regarding the
8 potential for the proposed project to result in a substantial adverse
9 change in a TTCS. The commission shall acknowledge that the
10 appropriate Native American tribes possess special expertise in
11 participating in this comment process. Except where appropriate
12 to protect the confidentiality of information concerning the
13 specific identity, location, character, or use of the TTCS, the
14 commission may seek and consider public comment and input.

15 (c) The commission shall accept and consider written
16 comments submitted to the commission pursuant to subdivision
17 (b), prior to making a final determination whether a proposed
18 project will result in a substantial adverse change to a TTCS. The
19 commission, in its discretion, may hold a hearing to accept
20 additional comments. A hearing by the commission to accept
21 additional comments may be closed to the public to maintain the
22 confidentiality of information concerning the specific identity,
23 location, character, or use of a TTCS.

24 (d) The commission shall prepare proposed written findings to
25 support its proposed determination pursuant to subdivision (a).
26 The proposed findings shall describe the basis for the proposed
27 determination by the commission. The commission shall provide
28 notice of its proposed determination and findings to the consulting
29 parties who were given notice pursuant to subdivision (b), and
30 shall provide those consulting parties with 10 days to submit
31 written comments to the commission regarding the proposed
32 determination and findings. The commission's proposed
33 determination and findings shall constitute a final determination
34 by the commission if no comments are submitted to the
35 commission during the comment period. If written comments are
36 submitted to the commission during the comment period, the
37 commission shall consider the comments, and modify the
38 proposed determination and findings, in its discretion, before
39 making a final determination consistent with procedures adopted
40 by the commission.



1 (e) A determination by the commission pursuant to this section
2 is exempt from the California Environmental Quality Act
3 (Division 13 (commencing with Section 21000)).

4 (f) *The baseline conditions by which the commission makes the*
5 *determination pursuant to this section shall be the physical*
6 *environmental conditions as they exist, from both a local and*
7 *regional perspective, at the time of making the request for*
8 *consultation with the commission or the filing of the application*
9 *for a proposed project with the lead agency, whichever occurs*
10 *earlier.*

11 SEC. 20. Section 5097.96.3 is added to the Public Resources
12 Code, to read:

13 5097.96.3. (a) Where the commission, all appropriate Native
14 American tribes who participated in the consultation process, and
15 the project proponent agree to incorporate project changes or
16 mitigation measures that would avoid or reduce substantial
17 adverse changes in a TTCS to a less than significant level, the
18 commission shall identify those project changes or mitigation
19 measures in its findings and notice to the lead agency pursuant to
20 Section 5097.96.2.

21 (b) Where the commission, all appropriate Native American
22 tribes who participated in the consultation process, and the project
23 proponent do not agree to project changes or mitigation measures
24 that would avoid or reduce substantial adverse changes to a TTCS,
25 the commission shall identify project changes or mitigation
26 measures, if any, that would avoid or reduce substantial adverse
27 changes to a TTCS to a less than significant level in its findings and
28 notice to the lead agency pursuant to Section 5097.96.2.

29 (c) Identification of project changes or mitigation measures by
30 the commission pursuant to this section is exempt from the
31 California Environmental Quality Act (Division 13 (commencing
32 with Section 21000)).

33 SEC. 21. Section 5097.96.4 is added to the Public Resources
34 Code, to read:

35 5097.96.4. (a) An appropriate Native American tribe
36 nominating a site to the TTCS Register, owners of property within
37 the site's boundaries, or other consulting parties may seek judicial
38 review of a final determination by the commission within 90 days
39 of a final determination regarding the listing of a site in the TTCS
40 Register and within 30 days of any other final determination. That



1 action shall be brought against the commission as a petition for a
2 writ of mandate pursuant to Section 1094.5 of the Code of Civil
3 Procedure.

4 (b) In a proceeding, whether in a trial or appellate court,
5 challenging a final determination of the commission, the court
6 shall protect the confidentiality of any information that would
7 create a risk of harm to the TTCS by disclosing, for example, its
8 specific identity, location, character, or use. If and to the extent
9 there is a risk of harm, the court shall conduct its proceedings in
10 camera and shall seal records of the proceeding and papers filed
11 with the court. In deciding whether there is a risk of harm to a
12 TTCS, the court may ask the commission to file a brief addressing
13 that issue and may, in the interim, seal records and papers and
14 conduct any hearings in camera until it makes a decision on the risk
15 of harm issue.

16 SEC. 22. Section 5097.96.5 is added to the Public Resources
17 Code, to read:

18 5097.96.5. (a) The commission shall adopt regulations
19 establishing procedures to maintain the confidentiality of
20 information concerning the specific identity, location, character,
21 or use of a TTCS.

22 (b) Notwithstanding the California Public Records Act
23 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
24 Title 1 of the Government Code), the Bagley-Keene Open Meeting
25 Act (Article 9 (commencing with Section 11120) of Chapter 1 of
26 Part 1 of Division 3 of Title 2 of the Government Code), or any
27 other law, no information obtained as a result of, or in connection
28 with, a nomination or consultation under this chapter that contains
29 a reference pertaining to the specific identity, location, character,
30 or use of a TTCS, may be released, except as provided in
31 subdivision (c). For purposes of this section, “information”
32 includes, but is not limited to, documents, records, the TTCS
33 Register itself, nomination forms, declarations, reports, maps,
34 letters, transcripts, minutes, comments, determinations, and
35 findings.

36 (c) The commission, owners of property within the site’s
37 boundaries, the project proponent, the appropriate Native
38 American tribes, other consulting parties authorized under this
39 chapter, and their respective attorneys and representatives may,
40 consistent with any procedures the commission adopts, access and



1 share with each other information for the purpose of participating
2 in the consultation process pursuant to this chapter.

3 (d) A person *described in subdivision (c)* who, *in violation of*
4 *a regulation adopted pursuant to subdivision (a)*, intentionally
5 releases information, knowing that it is required to be held
6 confidential pursuant to this section, is guilty of a misdemeanor
7 punishable by a fine of ten thousand dollars (\$10,000) or by
8 imprisonment in the county jail for not more than one year, or both.

9 (e) This section does not apply in a case in which all appropriate
10 Native American tribes waive the application of this section.

11 SEC. 23. Section 5097.97 of the Public Resources Code is
12 amended to read:

13 5097.97. In the event that a Native American organization,
14 tribe, group, or individual advises the commission that a proposed
15 action by a public agency may cause significant and irreparable
16 damage to a Native American sanctified cemetery, place of
17 worship, religious or ceremonial site, or sacred shrine located on
18 public property, or may bar appropriate access thereto by Native
19 Americans, the commission shall conduct an investigation as to the
20 effect of the proposed action. Where the commission finds, after
21 a public hearing, that the proposed action would result in damage
22 or interference, the commission may recommend mitigation
23 measures for consideration by the public agency proposing to take
24 the action. If the public agency fails to accept the mitigation
25 measures, and if the commission finds that the proposed action
26 would do significant and irreparable damage to a Native American
27 sanctified cemetery, place of worship, religious or ceremonial site,
28 or sacred shrine located on public property, the commission may
29 ask the Attorney General to take appropriate legal action pursuant
30 to Section 5097.94.

31 SEC. 24. Section 5097.98 of the Public Resources Code is
32 amended to read:

33 5097.98. (a) Whenever the commission receives notification
34 of a discovery of Native American human remains from a county
35 coroner pursuant to subdivision (c) of Section 7050.5 of the Health
36 and Safety Code, it shall immediately notify those persons it
37 believes to be most likely descended from the deceased Native
38 American. The descendants may, with the permission of the owner
39 of the land, or his or her authorized representative, inspect the site
40 of the discovery of the Native American remains and may



1 recommend to the owner or the person responsible for the
2 excavation work means for avoiding, treating, or disposing of,
3 with appropriate dignity, the human remains and any associated
4 grave goods. The descendants shall complete their inspection and
5 make their recommendation within 24 hours of their notification
6 by the Native American Heritage Commission. The
7 recommendation may include the scientific removal and
8 nondestructive analysis of human remains and items associated
9 with Native American burials.

10 (b) Whenever the commission is unable to identify a
11 descendent, or the descendent identified fails to make a
12 recommendation, or the landowner or his or her authorized
13 representative rejects the recommendation of the descendent, and
14 the mediation provided for in subdivision (n) of Section 5097.94
15 fails to provide measures acceptable to the landowner, the
16 landowner or his or her authorized representative shall reinter the
17 human remains and items associated with Native American burials
18 with appropriate dignity on the property in a location not subject
19 to further subsurface disturbance.

20 (c) Notwithstanding the provisions of Section 5097.9, the
21 provisions of this section, including those actions taken by the
22 landowner or his or her authorized representative to implement
23 this section and any action taken to implement an agreement
24 developed pursuant to subdivision (o) of Section 5097.94, shall be
25 exempt from the requirements of the California Environmental
26 Quality Act (Division 13 (commencing with Section 21000)).

27 (d) Notwithstanding the provisions of Section 30244, the
28 provisions of this section, including those actions taken by the
29 landowner or his or her authorized representative to implement
30 this section, and any action taken to implement an agreement
31 developed pursuant to subdivision (o) of Section 5097.94 shall be
32 exempt from the requirements of the California Coastal Act of
33 1976 (Division 20 (commencing with Section 30000)).

34 SEC. 25. Section 5097.99 of the Public Resources Code is
35 amended to read:

36 5097.99. (a) A person may not obtain or possess any Native
37 American artifacts or human remains that are taken from a Native
38 American grave or cairn on or after January 1, 1984, except as
39 otherwise provided by law or in accordance with an agreement



1 reached pursuant to subdivision (o) of Section 5097.94 or pursuant
2 to Section 5097.98.

3 (b) A person who knowingly or willfully obtains or possesses
4 any Native American artifacts or human remains that are taken
5 from a Native American grave or cairn after January 1, 1988,
6 except as otherwise provided by law or in accordance with an
7 agreement reached pursuant to subdivision (o) of Section 5097.94
8 or pursuant to Section 5097.98, is guilty of a felony that is
9 punishable by imprisonment in the state prison.

10 (c) A person who removes, without authority of law, any
11 Native American artifacts or human remains from a Native
12 American grave or cairn with an intent to sell or dissect or with
13 malice or wantonness is guilty of a felony that is punishable by
14 imprisonment in the state prison.

15 SEC. 26. Section 5097.993 is added to the Public Resources
16 Code, to read:

17 5097.993. If any provision of this chapter or the application
18 thereof to any person or circumstance is held invalid, that
19 invalidity may not affect other provisions or applications of this
20 chapter that can be given effect without the invalid provision or
21 application thereof, and to this end the provisions of this chapter
22 are severable.

23 SEC. 27. Section 5097.995 of the Public Resources Code is
24 amended to read:

25 5097.995. (a) (1) Any person who unlawfully and
26 maliciously excavates upon, removes, destroys, injures, or defaces
27 a Native American historic, cultural, or sacred site, that is listed or
28 may be eligible for listing in the California Register of Historic
29 Resources pursuant to Section 5024.1 or the TTCS Register
30 pursuant to Section 5097.96, including any historic or prehistoric
31 ruins, any burial ground, any archaeological or historic site, any
32 inscriptions made by Native Americans at such a site, any
33 archaeological or historic Native American rock art, or any
34 archaeological or historic feature of a Native American historic,
35 cultural, or sacred site is guilty of a misdemeanor if the act was
36 knowingly committed with specific intent to vandalize, deface,
37 destroy, steal, convert, possess, collect, or sell a Native American
38 historic, cultural, or sacred artifact, art object, inscription, or
39 feature, or site and the act was committed as follows:

40 (A) On public land.



1 (B) On private land, by a person, other than the landowner, as
2 described in subdivision (b).

3 (2) A violation of this section is punishable by imprisonment
4 in the county jail for up to one year, by a fine not to exceed ten
5 thousand dollars (\$10,000), or by both that fine and imprisonment.

6 (b) This section does not apply to any of the following:

7 (1) Any act taken in accordance with, or pursuant to, an
8 agreement entered into pursuant to subdivision (o) of Section
9 5097.94.

10 (2) Any action taken pursuant to Section 5097.98.

11 (3) Any act taken in accordance with Section 21097 and other
12 applicable sections of the California Environmental Quality Act
13 (Division 13 (commencing with Section 21000)).

14 (4) Any act taken in accordance with the National
15 Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.).

16 (5) Any act authorized under the Z'berg-Nejedly Forest
17 Practice Act of 1973 (Chapter 8 (commencing with Section 4511)
18 of Part 2 of Division 4).

19 (6) Any action taken with respect to a conservation easement
20 in accordance with Chapter 4 (commencing with Section 815) of
21 Division 2 of the Civil Code, or any similar nonperpetual
22 enforceable restriction that has as its purpose the conservation,
23 maintenance, or provision of physical access of Native Americans
24 to one or more Native American historic, cultural, or sacred sites,
25 or pursuant to a contractual agreement for that purpose to which
26 most likely descendents of historic Native American inhabitants
27 are signatories.

28 (7) Any otherwise lawful act undertaken by the owner, or an
29 employee or authorized agent of the owner acting at the direction
30 of the owner, of land on which artifacts, sites, or other Native
31 American resources covered by this section are found, including,
32 but not limited to, farming, ranching, forestry, improvements,
33 investigations into the characteristics of the property conducted in
34 a manner that minimizes adverse impacts unnecessary to that
35 purpose, and the sale, lease, exchange, or financing of real
36 property.

37 (8) Research conducted under the auspices of an accredited
38 postsecondary educational institution or other legitimate research
39 institution on public land in accordance with applicable permitting



1 requirements or on private land in accordance with otherwise
2 applicable law.

3 SEC. 28. Section 21084.3 is added to the Public Resources
4 Code, to read:

5 21084.3. (a) A project that may cause a substantial adverse
6 change, as defined in subdivision (l) of Section 5097.10, in a site
7 that is listed in the Traditional Tribal Cultural Site Register
8 established pursuant to Section 5097.95 may not be exempted
9 from this division pursuant to subdivision (a) of Section 21084.

10 (b) This section shall become operative on the 121st day after
11 the date of filing with the Secretary of State the initial set of
12 regulations adopted by the Native American Heritage
13 Commission to implement subdivision (d) of Section 5097.94,
14 subdivisions (b) and (c) of Section 5097.96, or subdivision (a) of
15 Section 5097.96.5, whichever occurs last.

16 SEC. 29. Section 21097 is added to the Public Resources
17 Code, to read:

18 21097. (a) A project that may cause a substantial adverse
19 change in a TTCS, as defined in subdivision (m) of Section
20 5097.10, is a project that may have a significant effect on the
21 environment. For purposes of this section, a TTCS is a site listed
22 in, or determined by the Native American Heritage Commission
23 to be eligible for listing in, the Traditional Tribal Cultural Site
24 Register established under Section 5097.96. A site that is not listed
25 in the TTCS Register is not precluded from being afforded
26 protection under this division so long as the commission
27 determines that the site is eligible for listing pursuant to
28 subdivision (b) of Section 5097.96.1.

29 (b) As used in this section, “substantial adverse change in a
30 TTCS” has the same meaning as in subdivision (l) of Section
31 5097.10.

32 (c) For purposes of this section, “Native American tribes” and
33 “appropriate Native American tribes” have the meaning provided
34 in subdivisions (a) and (j), respectively, of Section 5097.10.

35 (d) At the time that a lead agency determines that an activity is
36 a project and is not exempt from this division, the lead agency shall
37 provide written notice of the proposed project to the Native
38 American tribes identified on the Native American Contact List
39 pursuant to subdivision (d) of Section 5097.94 and to the Native



1 American Heritage Commission. The notice shall do all of the
2 following:

3 (1) Inform Native American tribes of their right to request
4 consultation, including for a determination of a site's eligibility for
5 listing in the TTCS Register pursuant to 5097.96.1, with the Native
6 American Heritage Commission within 20 days of the receipt of
7 notice by certified mail.

8 (2) Provide sufficient information describing the proposed
9 project, including a project map, to enable the Native American
10 tribes to consult with the commission to identify any TTCS that
11 may be affected by the proposed project.

12 (3) Include a copy of the service list.

13 (e) Upon receipt of a timely written request for consultation
14 pursuant to paragraph (1) of subdivision (d), the Native American
15 Heritage Commission shall promptly initiate consultation,
16 consistent with Section 5097.96.1, ~~to evaluate and determine~~
17 ~~whether a TTCS may be affected by the proposed project.~~ Nothing
18 in this section precludes the Native American tribes from electing
19 to participate through the regular public comment process
20 afforded by this division.

21 (f) After receiving notice from the lead agency pursuant to
22 subdivision (d), the commission shall notify the lead agency and
23 any appropriate Native American tribes that consulted with the
24 commission, in writing of its final determination not later than the
25 expiration of the period determined pursuant to subdivision (e) of
26 Section 5097.96.1. Any written notice by the commission
27 determining that ~~there are no TTCSs affected by~~ the proposed
28 project *will not cause a substantial adverse change in a TTCS* shall
29 be a final determination and no further consultation is required
30 under this division.

31 (g) Whenever the Native American Heritage Commission
32 determines ~~that a TTCS may be affected by the proposed project~~
33 ~~pursuant to subdivision (f) Section 5097.96.1 that the proposed~~
34 *project may cause a substantial adverse change in a TTCS and that*
35 *there are no project changes or mitigation measures agreed to that*
36 *will avoid or reduce the adverse change to below a level of*
37 *significance*, the commission shall proceed with consultation, in
38 accordance with ~~Sections 5097.96.1 and Section 5097.96.2, to~~
39 ~~determine whether the proposed project will cause a substantial~~
40 ~~adverse change in a TTCS, and to identify project changes or~~

1 ~~mitigation measures, if any, that would avoid or reduce the~~
2 ~~substantial adverse change. After notifying the lead agency that a~~
3 ~~TTCS may be affected by the proposed project, the commission~~
4 ~~shall notify in writing, the lead agency, project proponents, and~~
5 ~~any appropriate Native American tribes that consulted with the~~
6 ~~commission pursuant to this section, of its final determination not~~
7 ~~later than the expiration of the period determined pursuant to~~
8 ~~subdivision (a) of Section 5097.96.2. Any written notice by the~~
9 ~~commission of its final determination pursuant to Section~~
10 ~~5097.96.2 that a proposed project will not result in a substantial~~
11 ~~adverse change to a TTCS shall constitute substantial evidence~~
12 ~~upon which the lead agency may rely.~~

13 (h) To facilitate the consultation process, the lead agency shall,
14 in cooperation with the commission, arrange for a visit to the
15 project site by authorized representatives of appropriate Native
16 American tribes (as determined by the commission) if the
17 following conditions are met:

18 (1) The appropriate Native American tribe requests, in writing,
19 lead agency assistance to arrange for a visit to the project site.

20 (2) The request demonstrates that the visit is necessary to show
21 the location or boundaries of a TTCS, evaluate the potential for
22 substantial adverse change to a TTCS, or assist in the development
23 of project changes or mitigation measures.

24 (3) The request is submitted to the lead agency prior to the close
25 of public comment period.

26 (4) The lead agency secures permission from the landowner or
27 can escort the authorized representative onto the property within
28 existing authority to carry out inspections on the property.

29 (i) Where the commission makes a final determination that a
30 proposed project will result in a substantial adverse change to a
31 TTCS, the lead agency shall do the following:

32 (1) If the project proponent, the commission, and all
33 appropriate Native American tribes who participated in the
34 consultation process agree, as a result of the consultation required
35 by subdivision (g), to incorporate project changes or mitigation
36 measures that will avoid or reduce potential adverse changes to a
37 TTCS to below a level of significance, the lead agency shall
38 conclude that any adverse changes to a TTCS are less than
39 significant. The project changes or mitigation measures that
40 provide the basis for the lead agency's determination shall be



1 identified in a confidential appendix to the final environmental
2 impact report or mitigated negative declaration. The project
3 changes or mitigation measures identified in the final
4 environmental impact report or mitigated negative declaration,
5 together with the concurrence of the appropriate Native American
6 tribes who participated in the consultation process, the project
7 proponent and the commission, shall constitute substantial
8 evidence supporting the lead agency's conclusion that adverse
9 changes in a TTCS are less than significant.

10 (2) If the project proponent, the commission, and all
11 appropriate Native American tribes who participated in the
12 consultation process do not agree to project changes or mitigation
13 measures, as a result of the consultation required by subdivision
14 (g), the commission shall evaluate and provide a written
15 recommendation to the lead agency identifying project changes or
16 mitigation measures, if any, that would avoid or reduce potential
17 adverse changes to a TTCS. The lead agency, when making
18 findings required by paragraph (1) of subdivision (a) of Section
19 21081, or when adopting a mitigated negative declaration
20 pursuant to paragraph (2) of subdivision (c) of Section 21080, shall
21 consider the recommendation of the commission and shall adopt
22 all project changes or mitigation measures necessary to avoid or
23 reduce substantial adverse changes to any TTCS identified
24 pursuant to this section that the lead agency determines, based on
25 substantial evidence in light of the whole record, are feasible.

26 (j) (1) ~~In addition to~~ *When making* the findings required by
27 subdivision (b) of Section 21081, a public agency may not approve
28 or carry out a project that will result in a substantial adverse change
29 in a TTCS unless it has provided notice to, and made a good faith
30 effort to consult with the Native American Heritage Commission
31 and all appropriate Native American tribes, and unless the public
32 agency finds that all means for preserving the TTCS have been
33 considered to the maximum extent practicable.

34 (2) If a project located on state lands or federal lands managed
35 by the state will result in a substantial adverse change in a TTCS,
36 a public agency may not approve, carry out, or subsidize the
37 project unless the lead agency, based on substantial evidence in the
38 record, does one of the following:



1 (A) Makes the finding described in paragraph (1) or (2) of
2 subdivision (a) of Section 21081, or both, with respect to the
3 project's affect on the TTCS.

4 (B) Finds there is no legal or feasible way to accomplish the
5 project purpose without causing the substantial adverse change, all
6 feasible mitigation or avoidance measures have been incorporated
7 into the project, and there is an overriding environmental, public
8 health, or *public* safety reason to approve the project.

9 The findings described in subparagraphs (A) and (B) may be
10 made only after the lead agency provides 30 days notice to any
11 appropriate Native American tribes and an opportunity for those
12 tribes to comment on the proposed finding. For purposes of this
13 paragraph, "federal lands" means any land or interest in land
14 owned by the United States, including a leasehold interest held by
15 the United States, except for Indian trust lands. "Indian trust
16 lands" are lands held in trust by the United States on behalf of
17 tribal governments or individuals. Indian trust lands are
18 predominantly, though not solely, reservation lands.

19 (k) For purposes of this division, the Native American Heritage
20 Commission shall be considered a trustee agency having
21 jurisdiction by law over Native American archeological resources
22 and TTCSs. The trustee agency status of the commission may not
23 be construed to impair or alter any sovereign rights a Native
24 American tribe may have with respect to any of those resources.

25 (l) (1) ~~All regulatory programs On or before January 1, 2005,~~
26 ~~any state agency that administers, as a lead agency, a regulatory~~
27 ~~program certified by the Secretary for Resources of the Resources~~
28 ~~Agency pursuant to Section 21080.5 shall comply with the~~
29 ~~requirements set forth in this section. If a state agency's certified~~
30 ~~regulatory program does not comply with all of the requirements~~
31 ~~of this section by January 1, 2005, that agency shall submit to the~~
32 ~~unless the agency submits to the secretary an explanation detailing~~
33 ~~why how the certified regulatory program meets the criteria in~~
34 ~~paragraph (2) and therefore should remain unchanged and how~~
35 ~~the program nevertheless meets the objectives of Chapter 1.75~~
36 ~~(commencing with Section 5097.9) of Division 5 and any other~~
37 ~~applicable provisions of this division that pertain to TTCSs. The~~
38 explanation shall include all of the following:

39 (A) A written summary and overview of the certified
40 regulatory program, including a detailed description of its analysis



1 of impacts to TTCSSs or Native American archaeological
2 resources.

3 (B) Citations to the program’s provisions for notice and
4 consultation with appropriate Native American tribes and the
5 Native American Heritage Commission.

6 (C) Citations to the program’s provisions incorporating the
7 Native American Heritage Commission’s final determinations of
8 substantial adverse change ~~into any findings or determinations~~
9 ~~made by the agency administering the certified regulatory~~
10 ~~program.~~ *in TTCSSs.*

11 (D) A written summary of how a meaningful consultation
12 process, as defined in Section 5097.10, was incorporated.

13 *If a state agency administering a certified regulatory program*
14 *makes a timely submittal pursuant to this paragraph, the*
15 *regulatory program is not subject to Chapter 1.75 (commencing*
16 *with Section 5097.9) of Division 5 and any other applicable*
17 *provision of this division that pertains to TTCSSs, pending*
18 *completion of the secretary’s review pursuant to paragraph (2).*

19 (2) On or before January 1, 2006, the Secretary of the
20 Resources Agency shall notify the state agency *that makes the*
21 *submittal pursuant to paragraph (1)* as to whether its program
22 ~~meets~~ *provides all of the following:*

23 (A) *An adequate analysis of impacts to TTCSSs.*

24 (B) *Adequate notice to, and consultation with, appropriate*
25 *Native American tribes and the Native American Heritage*
26 *Commission.*

27 (C) *Provisions for incorporating, to the maximum extent*
28 *practicable, final determinations of substantial adverse change in*
29 *a TTCSS by the Native American Heritage Commission.*

30 (D) *A meaningful consultation process.*

31 (3) *Upon receipt of notice from the secretary that the state*
32 *agency’s program provides all the elements listed in this*
33 *paragraph, the program shall be deemed to meet the objectives of*
34 *Chapter 1.75 (commencing with Section 5097.9) of Division 5 and*
35 *any other applicable provisions of this division that pertain to*
36 *TTCSSs, and the program is therefore exempt from Chapter 1.75*
37 *(commencing with Section 5097.9) of Division 5 and from*
38 *subdivision (d) through (k), inclusive, (p), and (q) of this section.*
39 *If the secretary decides that the program does not ~~meet those~~*
40 *objectives provide all of the elements listed in this paragraph, the*



1 secretary shall *notify the state agency that the program is not*
2 *exempt and suggest changes to the program or withdraw*
3 *certification*. The secretary shall specify in writing the reasons for
4 his or her decision.

5 (4) *A state agency administering a certified regulatory*
6 *program that receives notice pursuant to paragraph (3) that its*
7 *program is not exempt may resubmit a new explanation for*
8 *consideration by the secretary pursuant to paragraph (3).*

9 (5) The secretary shall consult with the Native American
10 Heritage Commission in carrying out this subdivision.

11 (m) In the case of a project described in subdivision (c) of
12 Section 21065, ~~the project proponent may request, prior to the~~
13 ~~filing of an application with the lead agency, that the lead agency~~
14 *the project proponent may expedite the process by requiring the*
15 *lead agency to provide notice pursuant to subdivision (d) and by*
16 *providing the information required by paragraph (3) of*
17 *subdivision (d). Under this expedited notice procedure, the time*
18 *period determined pursuant to subdivision (e) of Section*
19 *5097.96.1 shall commence on the date the lead agency provided*
20 *notice pursuant to subdivision (d).*

21 (n) Any proceeding or finding under this section is subject to
22 the confidentiality provisions of Section 5097.96.5.

23 (o) In all actions or proceedings brought pursuant to this
24 section, including the hearing of an action or proceeding on appeal
25 from the decision of a lower court, all courts shall protect the
26 confidentiality of information that would create a risk of harm to
27 the TTCS by disclosing, for example, its specific identity, location,
28 character, or use. If and to the extent there is a risk of harm, the
29 court shall conduct its proceedings in camera and shall seal records
30 of the proceeding and papers filed with the court. In deciding
31 whether there is a risk of harm to a TTCS, the court may ask the
32 commission to file a brief addressing that issue and may, in the
33 interim, seal records and papers and conduct hearings in camera
34 until it makes a decision on the risk of harm issue.

35 (p) Any person who consulted with the Native American
36 Heritage Commission pursuant to Section 5097.96.1, 5097.96.2,
37 or 5097.96.3 and presented to the Native American Heritage
38 Commission and the lead agency an objection to the approval of
39 the project and the alleged grounds for noncompliance with this
40 division, orally or in writing during the comment period, is



1 deemed to have complied with Section 21177; provided, however,
2 that any action or proceeding to challenge a final determination of
3 the Native American Heritage Commission pursuant to Chapter
4 1.75 (commencing with Section 5097.09) of Division 5 shall be
5 brought pursuant to Section 5097.96.4.

6 (q) (1) For a project defined by subdivision (c) of Section
7 21065, the lead agency shall, prior to a determination pursuant to
8 Section 21080.1, consult with the Native American Heritage
9 Commission and the appropriate Native American tribes to
10 identify the existence of, or the probable likelihood of, Native
11 American human remains and associated grave goods.

12 (2) If, as a result of the consultation required by paragraph (1),
13 the lead agency determines that Native American human remains
14 and associated grave goods may be disturbed, the lead agency shall
15 ensure that the following steps are completed prior to approval of
16 the project:

17 (A) Develop an avoidance and mitigation plan in consultation
18 with any appropriate Native American tribes, and the Native
19 American Heritage Commission to prevent or minimize
20 destruction, removal, or reburial of the Native American human
21 remains and associated grave goods. The plan shall address the
22 potential discovery of Native American human remains and
23 associated grave goods, and potential reburial onsite and
24 disposition of cultural resources.

25 (B) The project proponent shall employ a Native American
26 monitor to monitor ground disturbance activities associated with
27 the proposed project in areas where Native American human
28 remains, associated grave goods, and cultural resources may be
29 discovered. Guidelines for monitoring adopted pursuant to
30 subdivision (o) of Section 5097.94 may be adopted by the Native
31 American Heritage Commission. In selecting a Native American
32 monitor, the project proponent shall give preference to Native
33 Americans with traditional ties to the project area.

34 ~~(r) No lead agency and no responsible agency may approve a
35 project in any area that is designated as Class C (Controlled Use)
36 or Class L (Limited Use) lands, or designated as an Area of Critical
37 Environmental Concern under the California Desert Conservation
38 Area Plan of 1980, as amended, by the Bureau of Land
39 Management of the United States Department of the Interior,
40 pursuant to Section 1781 of Title 43 of the United States Code, in~~



1 ~~any case where the federal Advisory Council on Historic~~
2 ~~Preservation, pursuant to Section 106 of the National Historic~~
3 ~~Preservation Act of 1966 (16 U.S.C. Sec. 470 et seq.), has~~
4 ~~recommended to any federal agency that approval for the project~~
5 ~~be denied because the project would effectively destroy the~~
6 ~~historical resources in the project area.~~

7 ~~(s)–~~

8 (r) This section shall become operative on the 121st day after
9 the date of filing with the Secretary of State the initial set of
10 regulations adopted by the Native American Heritage
11 Commission to implement subdivision (d) of Section 5097.94,
12 subdivisions (b) and (c) of Section 5097.96, or subdivision (a) of
13 Section 5097.96.5, whichever occurs last.

14 ~~(t)–~~

15 (s) If any provision of this section or the application thereof to
16 any person or circumstance is held invalid, that invalidity may not
17 affect other provisions or applications of this section that can be
18 given effect without the invalid provision or application thereof,
19 and to this end the provisions of this section are severable.

20 (t) *If the lead agency determines that a proposed project is*
21 *within the scope of a prior completed notice and consultation*
22 *process pursuant to this section, the lead agency shall include in*
23 *the notice provided pursuant to subdivision (d) a request that the*
24 *Native American Heritage Commission consult with the*
25 *appropriate Native American tribes and confirm that*
26 *determination not later than 20 days after receiving the notice.*
27 *Following consultation with the appropriate Native American*
28 *tribes, if the Native American Heritage Commission determines*
29 *that the prior notice and consultation process fully considered the*
30 *proposed project's impacts on any TTCS, it shall notify the lead*
31 *agency that it may rely on the prior completed consultation and*
32 *notice process, and that prior completed consultation shall*
33 *constitute a final determination by the Native American Heritage*
34 *Commission pursuant to Section 5097.96.1 or 5097.96.2.*

35 (u) This section does not apply to a project that the United
36 States Secretary of Defense, or his or her designee, has determined
37 is necessary for national security.

38 (v) *This section does not apply to the following projects:*

39 (1) *The operation, repair, maintenance, permitting, leasing,*
40 *licensing, or minor alteration of an existing public or private*



1 *structure, facility, mechanical equipment, or topographical*
2 *feature, involving negligible or no expansion of use beyond that*
3 *existing at the time of the lead agency's determination, and*
4 *consisting of one of the following:*

5 (A) *An existing facility of both investor and publicly owned*
6 *utilities used to provide electric power, telecommunications,*
7 *natural gas, sewerage, or other public utility services.*

8 (B) *Maintenance of a fish screen, fish ladder, wildlife habitat*
9 *area, artificial wildlife waterway device, streamflow, spring or*
10 *waterhole, and stream channel to protect fish and wildlife*
11 *resources.*

12 (2) *The replacement or reconstruction of an existing structure*
13 *or facility where the new structure will be located on the same site*
14 *as the structure replaced, will have substantially the same purpose*
15 *and capacity as the structure replaced, and will consist of one of*
16 *the following:*

17 (A) *The replacement or reconstruction of an existing utilities*
18 *system or facility involving negligible or no expansion of capacity.*

19 (B) *The conversion of an overhead distribution system facility*
20 *to underground, including the connection to existing overhead*
21 *distribution lines where the surface is restored to the condition*
22 *existing prior to the undergrounding.*

23 (3) *The construction and location of water main, sewage,*
24 *electrical, telecommunications, gas, and other utility extensions,*
25 *including street improvements of reasonable length to serve the*
26 *construction, so long as the construction consists of limited*
27 *numbers of new, small facilities or structures, installation of small*
28 *new equipment and facilities in small structures, and the*
29 *conversion of existing small structures from one use to another*
30 *where only minor modifications are made in the exterior of the*
31 *structure.*

32 SEC. 30. *Section 21097.5 is added to the Public Resources*
33 *Code, to read:*

34 21097.5. *No lead agency and no responsible agency may*
35 *approve a project in any area that is designated as Class C*
36 *(Controlled Use) or Class L (Limited Use) lands, or designated as*
37 *an Area of Critical Environmental Concern under the California*
38 *Desert Conservation Area Plan, as amended, by the Bureau of*
39 *Land Management of the United States Department of the Interior,*
40 *pursuant to Section 1781 of Title 43 of the United States Code, in*



1 *any case where the federal Advisory Council on Historic*
2 *Preservation, pursuant to Section 106 of the National Historic*
3 *Preservation Act of 1966 (16 U.S.C. Sec. 470 et seq.), has*
4 *recommended to any federal agency that approval for the project*
5 *be denied because the project would effectively destroy the*
6 *historical resources in the project area.*

7 SEC. 31. No reimbursement is required by this act pursuant
8 to Section 6 of Article XIII B of the California Constitution for
9 certain costs that may be incurred by a local agency or school
10 district because in that regard this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section 17556 of
13 the Government Code, or changes the definition of a crime within
14 the meaning of Section 6 of Article XIII B of the California
15 Constitution.

16 However, notwithstanding Section 17610 of the Government
17 Code, if the Commission on State Mandates determines that this
18 act contains other costs mandated by the state, reimbursement to
19 local agencies and school districts for those costs shall be made
20 pursuant to Part 7 (commencing with Section 17500) of Division
21 4 of Title 2 of the Government Code. If the statewide cost of the
22 claim for reimbursement does not exceed one million dollars
23 (\$1,000,000), reimbursement shall be made from the State
24 Mandates Claims Fund.

25 ~~SEC. 31. This act is an urgency statute necessary for the~~
26 ~~immediate preservation of the public peace, health, or safety~~
27 ~~within the meaning of Article IV of the Constitution and shall go~~
28 ~~into immediate effect. The facts constituting the necessity are:~~

29 ~~In order to stem the continuing loss of sacred sites as soon as~~
30 ~~possible, it is necessary that this act go into effect immediately.~~

